



DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[DOCKET #: RUS-22-ELECTRIC-0059]

Notice of Funding Opportunity (NOFO) for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2023

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces the acceptance of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2023. This notice is being issued in order to allow applicants sufficient time to prepare and submit their applications and give the Agency time to process applications within FY 2023. Based on FY 2023 appropriated funding, the Agency announces that \$900 million will be available for FY 2023. The purpose of the 313A Program is to guarantee loans to selected applicants as a Guaranteed Lender. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through apportionment. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be electronically received by RUS no later than 5:00 p.m. Eastern Time (ET) **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Applicants intending to submit applications must have their applications received by the closing deadline.

ADDRESSES: Completed applications must be submitted electronically to Amy McWilliams, Program Advisor, Electric Program, RUS at amy.mcwilliams@usda.gov.

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Program Advisor, Rural Utilities Service, USDA, 1400 Independence Avenue, SW, Mail Stop 1560, Room 4121-South, Washington, D.C. 20250-1560, by email at amy.mcwilliams@usda.gov, or call (202) 205-8663. Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2023.

Announcement Type: Notice of Funding Opportunity

Assistance Listing: 10.850.

Dates: Completed applications must be received by RUS no later than 5:00 p.m. Eastern Time (ET) [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and

- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. Purpose of the Program. The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as the “Guaranteed Lender” in this NOFO). The proceeds of the guaranteed loans are to be used (a) to make utility infrastructure loans or (b) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant’s use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOFO to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOFO to be used by the Guaranteed Lender to fund projects for the generation of electricity.

2. Statutory and Regulatory Authority. The 313A Program is authorized by section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c-1), and is implemented by

regulations located at 7 CFR Part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

3. Definitions. The definitions applicable to this NOFO are currently published at 7 CFR 1720.3.

4. Application of Awards. RUS will review and evaluate applications received in response to this NOFO based on the regulations at 7 CFR 1720.7, and as provided in this NOFO.

B. Federal Award Information

Type of Awards: Guaranteed Loans

Fiscal Year Funds: FY 2023.

Available Funds: \$900,000,000. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOFO. The number, amount, and terms of awards under this NOFO will depend in part on the number of eligible applications and the amount of funds requested. In determining whether to make an award, RUS will take overall program policy objectives into account.

Anticipated Award Date: Awards will be made on or before September 29, 2023, but no earlier than **[INSERT 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Performance Period: The RE Act provides that loans guaranteed under this program cannot exceed 30 years in length.

Renewal or Supplemental Awards: N/A

Type of Assistance Instrument: The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

C. Eligibility Information

1. Eligible Applicants. To be eligible to participate in the 313A Program or receive a guarantee, a Guaranteed Lender must meet the eligibility criteria specified in 7 CFR 1720.5.

2. Cost Sharing or Matching. There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

3. Other. Applications will only be accepted from lenders that serve rural areas as defined in 7 CFR 1710.2(a). For initial loans to a borrower made after June 18, 2008, the “rural” character of an area is determined at the time of the initial loan to furnish or improve service in the area.

D. Application and Submission Information

1. Address to Request Application Package.

All applications must be prepared and submitted in accordance with this NOFO and

7 CFR part 1720 (<https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720>).

2. Content and Form of Application Submission.

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

a. *Restrictions on Lobbying:*

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418.) This form is available at <https://www.gsa.gov/forms-library/disclosure-lobbying-activities>.

b. *Uniform Relocation Act assurance statement:*

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at <https://www.rd.usda.gov/resources/directives/electric-sample-documents>.

c. *Federal debt delinquency requirements:*

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at <https://www.rd.usda.gov/directives/federal-debt-delinquency-certification>.

d. *Form RD 400-4, Assurance Agreement:*

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR part 15, and 12 CFR part 202, 7 CFR part 1901, subpart E, DR 4300-003, DR 4330-0300, DR 4330-005. This form is available at <https://www.rd.usda.gov/directives/compliance-assurance-rd-form-400-4-nov-2017>.

e. *Articles of Incorporation and Bylaws:*

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

f. *Pro forma financial statements including cash flow projections and assumptions:*

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

g. Pending litigation statement:

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

3. System for Awards Management and Unique Entity Identifier.

a. At the time of application, each applicant must have an active registration in the System for Award (SAM) before submitting its application in accordance with 2 CFR part 25 (<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25>). In order to register in SAM, entities will be required to create Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at <https://sam.gov/content/entity-registration>.

b. Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

c. Applicant must ensure it completes the Financial Assistance General Certifications and Representations in SAM.

d. Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

e. The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that

the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* To be considered, applications must be submitted no later than 5:00 p.m. Eastern Time (ET) **[INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

5. *Funding Restrictions*

Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations and the RE Act.

6. *Other Submission Requirements.* Such other application documents and submissions deemed necessary by the Secretary for evaluation of applications.

E. Application Review Information

1. *Criteria*

Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

2. *Review and Selection Process.*

Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b). The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

F. Federal Award Administration Information

1. Federal Award Notices

RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB before the loan guarantee award can be obligated.

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator. Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

2. Administrative and National Policy Requirements-

Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

a. Compliance conditions.

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

(1) Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

(2) The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of bonds and notes be from any one particular borrower and (v) cannot be unsecured notes.

(3) The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

(4) The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

(5) Applicants must certify to the RUS, the portion of their loan portfolio that is:

i. Refinanced RUS debt;

ii. Debt of borrowers for whom both RUS and the applicants have outstanding loans;

and

iii. Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

b. *Schedule of Loan Repayment:* The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

3. *Compliance with Federal Laws.*

Applicants must comply with all applicable Federal laws and regulations.

a. This loan guarantee will be subject to the provisions contained in the appropriations act for FY 2023, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies. It is possible that such provisions will be included in the appropriations act for FY 2023.

b. An authorized official within your organization must execute, date, and return the loan commitment letter to RUS within, no later than 14 calendar days from the date of the letter, otherwise the commitment will be voided.

4. *Reporting*

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

G. Federal Awarding Agency Contact(s)— For general questions about this announcement, please contact your USDA Rural Development contact provided in the **ADDRESSES** section of this notice.

H. Other Information

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), OMB must approve all “collection of information” as a requirement for “answers to ***identical reporting or recordkeeping requirements imposed on ten or more persons ***” (44 U.S.C. 3502(3)(A)). RUS has concluded that the reporting requirements contained in this funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

National Environmental Policy Act

In accordance with 7 CFR 1970.53(a)(7), any proceeds to be used to refinance bonds or notes previously issued by the Guaranteed Lender for RE Act purposes are classified as categorical exclusions. However, for any new projects using 313A Program funds, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25 (<https://www.ecfr.gov/current/title-2/part-25>), must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (<https://www.ecfr.gov/current/title-2/part-170>).

Civil Rights Act

All loan guarantees made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR Part 15, subpart A (eCFR :: 7 CFR part 15 subpart A -- Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture - Effectuation of title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, USDA Program Discrimination Complaint Form, which can be obtained online at <https://www.usda.gov/sites/default/files/documents/ad-3027.pdf>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the

complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD-3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture

Office of the Assistant Secretary for Civil Rights

1400 Independence Avenue, SW

Washington, D.C. 20250-9410; or

(2) Fax: (833) 256-1665 or (202) 690-7442; or

(3) Email: program.intake@usda.gov

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Andrew Berke,
*Administrator,
Rural Utilities Service,
USDA Rural Development.*

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